

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-05

**HUNTINGTON INTERNATIONAL, INC.,
JC HORIZON LTD., AND JUDY LEE –
POSSIBLE VIOLATIONS OF SECTIONS 10(a)(1) AND 19
OF THE SHIPPING ACT**

**JOINT MEMORANDUM IN SUPPORT OF
PROPOSED SETTLEMENT**

JC Horizon Ltd. (JC Horizon), Judy Lee, an individual, (hereinafter jointly referred to as Respondents) and the Bureau of Enforcement (BOE) hereby submit this joint memorandum in support of approval of the proposed Settlement Agreement appended hereto. The parties believe that the proposed agreement meets the Federal Maritime Commission's (Commission) criteria for approval of agreements resolving administrative enforcement claims and, therefore respectfully request that it be approved.

INTRODUCTION

By Order of Investigation and Hearing served June 4, 2014 (Order), the Commission commenced this proceeding against Huntington International, Inc. (Huntington), JC Horizon and Judy Lee based on allegations by BOE to determine: (1) whether Huntington, previously licensed as an ocean transportation intermediary (OTI), (a) violated Section 19(a) and (b) of the Shipping Act of 1984, as amended (the "Act"), 46 U.S.C. §§ 40901, 40902, by continuing to

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operate as an OTI after its license had been revoked; (b) violated section 19(e) of the Act, 46 U.S.C. § 40904, and the Commission's regulations, 46 C.F.R. Part 515, by collecting freight forwarder compensation on shipments in which Judy Lee, an officer and director of the company, had a beneficial interest; and (c) violated section 10(a)(1) of the Act, 46 U.S.C. § 41102(a) and the Commission's regulations, by sharing compensation with JC Horizon and Judy Lee; and (2) whether JC Horizon and Judy Lee violated section 10(a)(1) of the Shipping Act by knowingly and willfully obtaining ocean transportation at less than the rates and charges that would otherwise apply by directing Huntington to pay over to Respondents monies derived from freight forwarder compensation paid by ocean common carriers that transported Respondent JC Horizon's shipments. The Commission's Order further directed that in the event violations of the Shipping Act are found, a determination be made whether civil penalties should be assessed against Respondents and, if so, the amount of penalties to be assessed and/or appropriate cease and desist orders should be issued.

BOE was designated as a party to the proceeding. Following commencement of this proceeding, Respondents JC Horizon and Judy Lee appeared through counsel and separately filed answers, including a counterclaim by JC Horizon based on the Equal Access to Justice Act. Huntington has not entered an appearance, filed an answer, or otherwise participated in this matter and is not party to the settlement agreement.¹ Following issuance of the Initial Order by the Administrative Law Judge (ALJ), the parties jointly submitted a procedural schedule to the ALJ, commenced discovery, engaged in settlement discussions and reached the agreement submitted herewith.

¹ It appears that Huntington shut down its business and vacated its premises. The Commission has been unsuccessful to date in its several efforts to serve Huntington with the Order commencing this proceeding and BOE does not believe that continued efforts in this regard are warranted. BOE seeks dismissal of Huntington, which is supported by Respondents JC Horizon and Judy Lee, as a component of the parties' determination to comprehensively resolve this proceeding via negotiation and compromise, rather than through litigation.

The Settlement Agreement accompanying this memorandum is the result of good faith negotiations. Because agreement has been reached at such an early stage of the proceeding, absent approval of settlement, the entirety of the proceeding lies ahead and the parties envision lengthy, complicated and protracted litigation, to include extensive discovery, submission of pre-hearing statements, as well as the briefing and submission of the parties' respective cases. Respondents do not admit any violations and the parties maintain in the Settlement Agreement the strength of their respective positions.

Notwithstanding, the Parties recognize that there are significant risks and costs involved in litigation and that the ultimate outcome is by no means certain. The conduct upon which to the allegations in this proceeding are based terminated with the demise of Huntington. The Settlement Agreement includes payment of a significant civil penalty which recognizes the seriousness of the violations alleged and at the same time provides a full and final resolution of the issues and avoids the expense and uncertainty of litigation.

Respondents and BOE believe it is in the best interests of the parties and the shipping public to resolve this proceeding rather than engage in further litigation. Upon approval of the proposed settlement by the Presiding Officer and the Commission, Respondents and BOE seek dismissal of Docket No. 14-05 against Respondents with prejudice, inclusive of the Respondent's counterclaim.

AUTHORITY FOR SETTLEMENT

The Administrative Procedure Act (APA), 5 U.S.C. § 554(c)(1), requires agencies to give interested parties an opportunity, *inter alia*, to submit offers of settlement "when time, the nature of the proceeding, and the public interest permit." As the legislative history of the APA makes

clear, Congress intended this particular provision to be read broadly so as to encourage the use of settlement in proceedings such as the present one:

[E]ven where formal hearing and decision procedures are available to parties, the agencies and the parties are authorized to undertake the informal settlement of cases in whole or in part before undertaking the more formal hearing procedure. Even courts through pretrial proceedings dispose of much of their business in that fashion. There is much more reason to do so in the administrative process, for informal procedures constitute the vast bulk of administrative adjudication. . . . The statutory recognition of such informal methods should strengthen the administrative arm and serve to advise private parties that they may legitimately attempt to dispose of cases at least in part through conferences, agreements, or stipulations.

Senate Committee on the Judiciary, Administrative Procedure Act-Legislative History, S. Doc. No. 248-79, at 24 (2d Sess. 1946).

Courts have endorsed the use of the APA settlement provision “to eliminate the need for often costly and lengthy formal hearings in those cases where the parties are able to reach a result of their own which the appropriate agency finds compatible with the public interest.” *Pennsylvania Gas and Water v. Federal Power Commission*, 463 F.2d 1242, 1247 (D.C. Cir. 1972).

The Commission itself has also long recognized that the law strongly favors settlements:

'The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts and it is thus advantageous to judicial administration, and, in turn, to government as a whole.'

Old Ben Coal Company v. Sea-Land Services, Inc., 18 S.R.R. 1085, 1092 (1978) (citation omitted). See also *Del Monte Corp. v. Matson Navigation Co.*, 19 S.R.R. 1037, 1039 (1979); *Behring International, Inc. - Independent Ocean Freight Forwarder License No. 910*, 20 S.R.R.

1025, 1032-33 (Initial Decision; administratively final June 30, 1981); Docket No. 10-09, *Sinicway International Logistics Ltd. – Possible Violations*, slip op. at 4, (Initial Decision, Feb. 22, 2011, administratively final Mar. 25, 2011); and Docket No. 11-06, *Indigo Logistics, LLC, et al. – Possible Violations*, slip op. at 4-5, (Initial Decision Oct. 20, 2011, administratively final Nov. 21, 2011).

The Commission's regulations reflect its policy of encouraging settlements. Rule 91 of the Commission's Rules of Practice and Procedure, 46 C.F.R. §502.91, codifies the *Old Ben Coal* holding in language borrowed in part from the APA, 5 U.S.C. § 554(c)(1). In accordance with the provisions of Rule 91 and its policy favoring settlements, the Commission has frequently approved settlements of administrative and investigative proceedings.² They also recognize the designated role of BOE in formal proceedings and, necessarily, in the settlement of those proceedings. 46 C.F.R. §§ 502.42 and 502.63. The regulations also require that such settlement agreements in formal proceedings be submitted to the Presiding Officer for approval. 46 C.F.R. § 502.603(a).

CRITERIA FOR APPROVAL OF SETTLEMENT

To discharge the duty imposed by 46 C.F.R. § 502.603(a), the Presiding Officer must decide whether the proposed settlement satisfies the appropriate criteria for approval. In so deciding, the Presiding Officer generally "reviews a settlement agreement to ensure that it does

² See *Eastern Forwarding International, Inc. - Independent Ocean Freight Forwarding Application - Possible Violations, Section 44, Shipping Act, 1916*, (Eastern Forwarding), 20 S.R.R. 283, 286 (Initial Decision; administratively final Sept. 8, 1980); *Far Eastern Shipping Co. - Possible Violations of Sections 16, Second Paragraph, 18(b)(3) and 18(c), Shipping Act, 1916*, (FESCO), 21 S.R.R. 743, 764 (Initial Decision; administratively final, May 7, 1982); *Armada Great Lakes/East Africa Service, Ltd.; Great Lakes Transcaribbean Line, (Armada)* 23 S.R.R. 946, 949 (Initial Decision; administratively final Apr. 25, 1986); *Member Lines of the Transpacific Westbound Rate Agreement - Possible Violations of the Shipping Act of 1984, (TWRA)*, 23 S.R.R. 1329, 1340 (Initial Decision; administratively final Oct. 9, 1986); *Royal Caribbean Cruises Ltd. Possible Violations of Certification Requirements, (Royal Caribbean)*, 26 S.R.R. 64 (Order Approving Settlement and Discontinuing Proceeding, Dec. 4, 1991).

not contravene law or public policy. Such review typically includes evaluating factors to determine that the settlement agreement was not a product of fraud, duress, undue influence, or mistake." *World Chance Logistics (Hong Kong), Ltd. and Yu, Chi Shing (a.k.a. Johnny Yu) – Possible Violations of Section 10 of the Shipping Act of 1984 (World Chance)*, 31 S.R.R. 1346, 1350 (FMC 2010) (citations omitted). The Presiding Officer will also review the terms of a settlement agreement, "to ensure that the terms are fair, reasonable, and adequate. The review process frequently involves a balancing of the likelihood of success on the merits against the cost and complexity of proceeding to final judgment." *Id.*

In Commission-initiated proceedings such as the instant one, the Presiding Officer must also decide whether the proposed settlement agreement satisfies the appropriate criteria for approval with regard to the issue of penalty assessment. A summary of the Commission's view of the relationship between the criteria for assessment of penalties and the criteria for approving settlements appears in the initial decision in *Armada, supra*:

As seen, Section 13(c) of the Act and § 505.3 of the Commission's regulations, which implements both Section 13 of the Act and Section 32 of the 1916 Act, explicitly set forth criteria for assessment of penalties, and while they do not directly address the criteria for settlement of penalties, I believe the latter are subsumed by the former. This is manifest from the history of the settlement process at the Commission. Section 32(e) of the 1916 Act was enacted in 1977. The rules and regulations implementing Section 32(e) were promulgated and published by the Commission in a predecessor version of 46 C.F.R. § 505, in 1979. Under those rules the 'criteria for compromise, settlement or assessment' might 'include but need not be limited to those which are set forth in 4 C.F.R. Parts 101-105.' . . . Those standards, particularly, the standards enumerated in 4 C.F.R. § 103, were a part of the Commission's program for settlement and collection of civil penalties even before the authority to assess penalties was given the Commission pursuant to Section 32(e). More to the point, it was held that those standards provided criteria for both settlements and assessments. 'They continue to provide valuable assistance to the Commission as an aid in determining the amount of penalty in assessment proceedings and in determining whether to approve proposed settlements in assessment proceedings.'

23 S.R.R. at 956 (footnote omitted) (emphasis in original) (quoting *Eastern Forwarding and Behring International, supra*). See also, *Marcella Shipping Co. Ltd.*, 23 S.R.R. 857, 866 (Initial Decision; administratively final Mar. 26, 1986).

In *FESCO*, the Commission summarized the appropriate criteria for approving proposed settlements where a penalty assessment is present as follows:

[S]ettlement may be based upon a determination that the agency's 'enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon'; that 'the amount accepted in compromise. . .may reflect an appropriate discount for the administrative and litigative costs of collection having regard for the time it will take to effect collection'; the value of settling claims on the basis of pragmatic litigative probabilities, i.e., the ability to prove a case for the full amount claimed either because of legal issues involved or a bona fide dispute as to facts; and that penalties may be settled 'for one or for more than one of the reasons authorized in this part.' [Emphasis added.]

FESCO, supra, 21 S.R.R. at 759 (footnotes omitted). Subsequent to *FESCO*, the Commission reaffirmed that potential costs and uncertainties of success are valid factors to be considered both in the negotiation of a settlement, and in view of a settlement agreement. *Investigation of Unfiled Agreements - Yangming Marine Transport, Evergreen Marine Corporation and Orient Overseas Container Line, Inc.*, (Yangming) 24 S.R.R. 910 (Order Adopting Initial Decision, Mar. 30, 1988). See also, *Royal Caribbean, supra*.

In accordance with the Commission's analysis as enunciated in *World Chance, FESCO, Eastern, Armada, Yangming*, and *Royal Caribbean, supra*, proposed settlements are to be evaluated on the basis of balancing agency enforcement policy of deterrence ,³ with the litigative

³ The parties note that third-party shipper complaints were not a basis for the allegations in the Order of Investigation and Hearing, and were not part of the settlement discussions between the parties. No third party has come forward to contest the approval of the proposed settlement. Accordingly, the parties submit that the shipping public will not now be harmed by the approval of this settlement agreement. See *World Chance*, 31 S.R.R. at 1351-52.

probabilities, litigative and administrative costs, and such other matters as justice may require. That balance favors approval of this proposed settlement.

As stated in the Introduction, because the parties reached agreement at the initial stage of the case, virtually all procedural steps remain to be undertaken in this proceeding. The factual and legal issues are complex requiring extensive discovery. The parties contemplate development and submission of voluminous documentation supplemented by testimony and the resulting expenditure of resources in addressing that evidentiary presentation. The potential litigative and administrative costs of this proceeding thus weigh heavily in favor of approval of this proposed settlement agreement. In addition to such unnecessary costs, the proposed settlement avoids the uncertainties involved in any litigation and in particular the penal phase of the proceeding. The proposed agreement brings the matter to conclusion and provides certainty to respondents with respect to the penalty thereby allowing them to plan their future. Also, as noted, the transactions giving rise to the allegations in this proceeding terminated when Huntington went out of business.

With respect to the policy of enforcement, the proposed settlement would serve as a disincentive to future unlawful activities. The agreed civil penalty takes into account the Commission's policies for deterrence and future compliance with the Commission's rules and regulations and applicable statutes. See 46 C.F.R. §502.603(b). The settlement amount will have the desired effect "because it would serve as a disincentive to future unlawful activity." *World Chance*, 31 S.R.R. at 1352, (quoting *FESCO*, 21 S.R.R. at 759) (internal quotations omitted). Accordingly, the parties submit that the proposed settlement agreement will further the Commission's enforcement policy.

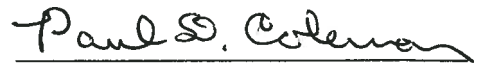
CONCLUSION

The proposed settlement agreement comprehensively addresses the issues relating to the Respondents and meets the Commission's well established criteria for approval of agreements settling administrative enforcement claims and, therefore, should be approved. Upon approval of the settlement and dismissal of Huntington International as a party to this proceeding, Docket No. 14-05 should be discontinued in its entirety.

Respectfully submitted,



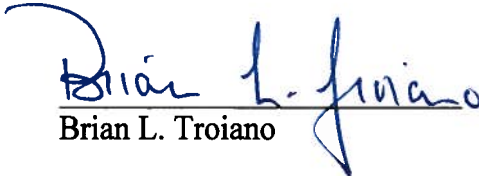
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served this 4th day of September, 2014, by first class mail with postage prepaid upon Huntington International, Inc., 411 E. Huntington Dr., Suite 312, Arcadia, CA 91006.


Brian L. Troiano

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-05

**HUNTINGTON INTERNATIONAL, INC., JC HORIZON LTD., AND JUDY LEE
POSSIBLE VIOLATIONS OF
SECTIONS 10(a)(1) AND 19 OF THE SHIPPING ACT OF 1984**

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the Agreement) is entered into between:

- 1) the Federal Maritime Commission's Bureau of Enforcement (BOE), and
- 2) JC Horizon Ltd. (JC Horizon) and Judy Lee, an individual (jointly referred to as Respondents);

WHEREAS, BOE has alleged that Respondents violated Section 10(a)(1) of the Shipping Act of 1984 (Shipping Act), 46 U.S.C. § 41102(a), by knowingly and willfully directing that monies derived from freight forwarder compensation collected by Huntington International, Inc. (Huntington), a freight forwarder said to be affiliated with Respondents, be paid to JC Horizon, or other companies subject to the control of Judy Lee, and thereby obtaining ocean transportation for JC Horizon shipments at less than the applicable rates and charges;

WHEREAS, the Commission has acted on said allegations and related allegations against Huntington, by instituting FMC Docket No. 14-05, *Huntington International, Inc., JC Horizon Ltd., and Judy Lee – Possible Violations of Sections 10(a)(1) and 19 of the Shipping Act of 1984* to determine whether Respondents violated the Shipping Act as

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alleged; whether, in the event such violations are found, civil penalties should be assessed; and whether appropriate cease and desist orders should be entered;

WHEREAS, Respondents do not admit that they violated any provision of the Shipping Act;

WHEREAS, BOE asserts that it would submit a compelling case in support of its allegations that Respondents violated the Shipping Act;

WHEREAS, Respondents assert that they would submit compelling defenses against BOE's allegations;

WHEREAS, the events and transactions that served as the basis for BOE's allegations in this proceeding occurred between 2009 and 2012;

WHEREAS, co-respondent Huntington ceased operating in 2012, is no longer in business, and has not appeared in this proceeding through counsel or otherwise;

WHEREAS, BOE and Respondents JC Horizon and Judy Lee believe it is in the best interests of the parties and the shipping public to fully and finally resolve the allegations against Respondents in this proceeding under the conditions stated herein rather than continue to engage in the extensive and protracted litigation anticipated by the parties;

NOW, THEREFORE, in consideration of the premises herein, and in compromise of all civil penalties arising from the alleged violations against Respondents set forth and described herein, BOE and Respondents hereby agree on the following terms of settlement:

- (1) On or before September 29, 2014, Respondents shall make monetary payment to the Federal Maritime Commission in the amount of \$300,000.00 (Three Hundred Thousand Dollars);
- (2) JC Horizon's counterclaim against the Federal Maritime Commission premised on the

Equal Access To Justice Act, 5 U.S.C. § 504, as set forth in its Answer, shall be dismissed simultaneously with dismissal of this proceeding against it;

- (3) BOE has separately moved for dismissal of Huntington International, Inc. as a party in this proceeding, and Respondents have voiced their support for such dismissal as part of a comprehensive resolution of this action.
- (4) Upon approval of the terms set forth in this Agreement by the Administrative Law Judge and the Commission, this instrument shall forever bar the commencement or institution by the Commission of any civil penalty assessment proceeding or other claim for recovery of civil penalties against Respondents for the alleged violations of the Shipping Act set forth in Docket No. 14-05, including the period from July 1, 2009 through December 31, 2012.
- (5) Nothing in this Agreement is to be understood as an admission of wrongdoing or liability by Respondents or a violation of the Shipping Act.
- (6) Respondents hereby waive any requirement or demand that the Commission's decision or order contain a statement of findings of fact and conclusions of law.
- (7) Respondents are represented by counsel, have reviewed the terms of the Agreement with counsel, and understand and agree to the terms and conditions stated herein.
- (8) This Agreement is subject to approval by the Commission in accordance with 46 C.F.R. §502.603. Upon approval of this Agreement, the Commission shall discontinue FMC Docket No. 14-05 with prejudice.

BY OR ON BEHALF OF RESPONDENT
JC HORIZON LTD.

Paul D. Coleman

Signed

Paul D. Coleman

Printed name

Attorney-in-Fact

Title or capacity

September 3, 2014

Date

BY OR ON BEHALF OF RESPONDENT
JUDY LEE

Paul D. Coleman

Signed

Paul D. Coleman

Printed Name

Attorney-in-Fact

Capacity if other than self

September 3, 2014

Date

ON BEHALF OF THE FEDERAL MARITIME COMMISSION

By:

Peter J. King
Peter J. King, Director
Bureau of Enforcement

Date:

Sept 3, 2014